

No. 24-12311

**United States Court of Appeals
for the Eleventh Circuit**

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

DONALD J. TRUMP, *et al.*,

Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of Florida

No. 9:23-cr-80101-AMC; Hon. Aileen Cannon

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*
FORMER ATTORNEYS GENERAL EDWIN MEESE III AND
MICHAEL B. MUKASEY, PROFESSORS STEVEN CALABRESI
AND GARY LAWSON, CITIZENS UNITED, AND CITIZENS
UNITED FOUNDATION IN SUPPORT OF
APPELLEES AND AFFIRMANCE**

MICHAEL BOOS
DANIEL H. JORJANI
CITIZENS UNITED
CITIZENS UNITED FOUNDATION
1006 Pennsylvania Avenue, S.E.
Washington, DC 20003

GENE C. SCHAERR
Counsel of Record
KENNETH A. KLUKOWSKI
JUSTIN A. MILLER
SCHAERR | JAFFE LLP
1717 K Street NW, Suite 900
Washington, DC 20006
Telephone: (202) 787-1060
gschaerr@schaerr-jaffe.com

Counsel for Amici Curiae

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**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Under Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1 through 26.1-3, and in addition to those persons and entities identified by the Appellants, Appellees, and other *Amici*, *Amici* here identify all additional attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case:

1. Advance Publications, Inc.
2. Alonso, Cristina
3. America First Legal Foundation
4. America First Policy Institute
5. America's Future
6. American Broadcasting Companies, Inc., d/b/a ABC News
7. American Center for Law and Justice
8. Ayer, Donald
9. Bailey, Andrew
10. Bell, Daniel
11. Berry, Michael
12. Bird, Brenna

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13. Blackman, Joshua
14. Blanche, Todd
15. Bloomberg, L.P.
16. Bondi, Pamela J.
17. Boos, Michael
18. Bove, Emil
19. Bowman, Chad
20. Bratt, Jay
21. Cable News Network, Inc.
22. Calabresi, Steven
23. Caldera, Louis
24. Cannon, Hon. Aileen
25. Cate, Matthew
26. CBS Broadcasting, Inc. o/b/o CBS News
27. Citizens for Responsibility and Ethics in Washington
28. Citizens United
29. Citizens United Foundation
30. CMG Media Corporation
31. Coleman, Russell

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32. Coleman, Tom
33. Commonwealth of Kentucky
34. Conservative Legal Defense and Education Fund
35. Conway, George
36. Cooney, J.P.
37. Couzo, Amber Aurora
38. Cox Enterprises, Inc. (COX) d/b/a The Atlanta Journal-
Constitution
39. Cynkar, Robert J.
40. Dadan, Sasha
41. De Oliveira, Carlos
42. Dow Jones & Company, Inc., publisher of The Wall Street
Journal
43. Dreeben, Michael
44. Drummond, Gentner
45. Edelstein, Julie
46. Ekonomou, Andrew J.
47. Fields, Lazaro
48. Fitch, Lynn

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49. Fitzgerald, Patrick
50. Forrester, Nathan
51. Fort Myers Broadcasting Company
52. Fugate, Rachel Elise
53. Garland, Merrick B.
54. Gerson, Stuart
55. Gertner, Nancy
56. Gilbert, Karen E.
57. Gillers, Stephen
58. Goodman, Hon. Jonathan
59. Gray Media Group, Inc. (GTN)
60. Griffin, Tim
61. Guardian News & Media Limited
62. Gun Owners Foundation
63. Gun Owners of America
64. Gun Owners of California
65. Harbach, David
66. Hilgers, Michael T.
67. Hirsch, Steven A.

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68. Hulser, Raymond
69. Insider, Inc.
70. Irving, John
71. Jackley, Marty J.
72. Jorjani, Daniel H.
73. Kise, Christopher
74. Klugh, Richard C.
75. Klukowski, Kenneth A.
76. Knudsen, Austin
77. Kobach, Kris
78. Labrador, Raúl R.
79. Lacovara, Philip Allen
80. Landmark Legal Foundation
81. Lawson, Gary
82. Li, XiXi
83. Los Angeles Times Communications LLC, publisher of The Los
Angeles Times
84. Marshall, Steve
85. Maynard, Hon. Shaniek Mills

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86. McElory, Dana Jane
87. McKay, John
88. McNamara, Anne
89. McSweeney, Cynkar & Kachouroff, PLLC
90. McSweeney, Patrick
91. Meese, Hon. Edwin III.
92. Miller, Justin A.
93. Mishkin, Maxwell
94. Moelker, Nathan J.
95. Monson, Darrick
96. Moody, Ashley
97. Morgan, Jeremiah L.
98. Morrissey, Patrick
99. Mukasey, Michael B.
100. Murrell, Larry Donald
101. Murrill, Liz
102. National Cable Satellite Corporation d/b/a C-SPAN
103. National Public Radio, Inc.
104. Nauta, Waltine

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105. NBCUniversal Media, LLC d/b/a NBC News, a subsidiary of Comcast Corporation (CMCSA)
106. Nielson, Aaron L.
107. Olson, William J.
108. One Nation Under God Foundation
109. Orlando Sentinel Media Group, publisher of the Orlando Sentinel
110. Paxton, Ken
111. Pearce, James
112. Pellettieri, John
113. Pettit, Lanora C.
114. POLITICO LLC
115. Potter, Trevor
116. Public Advocate of the United States
117. Radio Television Digital News Association
118. Rakin, David
119. Raul, Alan Charles
120. Ray, Robert W.
121. Reeder, L. Martin Jr.

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- 122. Reinhart, Hon. Bruce E.
- 123. Reuters News & Media, Inc.
- 124. Reyes, Sean
- 125. Reynolds, Brett
- 126. Rokita, Theodore E.
- 127. Roth, Stuart J.
- 128. Russell, Lauren
- 129. Salario, Samuel
- 130. Sample, James J.
- 131. Sasso, Michael
- 132. Schaerr, Gene C.
- 133. Schaerr | Jaffe LLP
- 134. Sekulow, Jay Alan
- 135. Sekulow, Jordan
- 136. Seligman, Matthew A.
- 137. Sisney, Benjamin P.
- 138. Skrmetti, Jonathan
- 139. Smith, Abbe
- 140. Smith, Fern

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141. Smith, Jack
142. State Democracy Defenders Action
143. State of Alabama
144. State of Alaska
145. State of Arkansas
146. State of Florida
147. State of Idaho
148. State of Indiana
149. State of Iowa
150. State of Kansas
151. State of Louisiana
152. State of Mississippi
153. State of Missouri
154. State of Montana
155. State of Nebraska
156. State of Oklahoma
157. State of South Carolina
158. State of South Dakota
159. State of Tennessee

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160. State of Texas
161. State of Utah
162. State of West Virginia
163. Steinmann, Jessica Hart
164. Sun-Sentinel Company, LLC, publisher of the South Florida Sun
Sentinel
165. Taylor, Treg
166. TEGNA, Inc. (TGNA)
167. Telemundo Network Group, LLC d/b/a Noticias Telemundo
168. Thakur, Michael
169. The Associated Press
170. The E.W. Scripps Company (SSP)
171. The McClatchy Company, LLC (MNI) d/b/a the Miami Herald
172. The New York Times Company (NYT)
173. The Palm Beach Post and USA TODAY, publications operated
by subsidiaries of Gannett Co., Inc. (GCI)
174. Thompson, Larry
175. Tillman, Seth Barrett
176. Tobin, Charles

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- 177. Torres, Hon. Edwin
- 178. Trent, Edward H.
- 179. Tribe, Laurence
- 180. Troye, Olivia
- 181. Trump, President Donald J.
- 182. Trusty, James
- 183. Twardy, Stanley
- 184. United States of America
- 185. Univision Networks & Studios, Inc.
- 186. U.S. Constitutional Rights Legal Defense Fund
- 187. VanDevender, Cecil
- 188. Webster, Brent
- 189. Weiss, Stephen
- 190. Weld, William
- 191. Wessan, Eric H.
- 192. Wharton, Kendra
- 193. Whitaker, Henry
- 194. Whitaker, Matthew
- 195. Whitman, Christine Todd

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196. William J. Olson, P.C.

197. Wilson, Alan

198. Woodward, Stanley

199. WP Company LLC d/b/a The Washington Post

200. WPLG, Inc.

Amici state that no publicly traded company or corporation has an interest in the outcome of this case or appeal. Fed. R. of App. P. 26.1; 11th Cir. R. 26.1.

Citizens United is a nonprofit corporation headquartered in Washington, D.C., and recognized as a social welfare organization under Section 501(c)(4) of the Internal Revenue Code. Citizens United Foundation is a nonprofit corporation headquartered in Washington, D.C., and recognized as an educational organization under Section 501(c)(3) of the Internal Revenue Code. It has no parent corporation, has issued no stock, and as such, no publicly held company owns 10 percent or more of its stock.

None of these *amici* has a parent corporation or issued stock, therefore no publicly held company owns 10 percent or more of their stock.

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Respectfully submitted,

/s/ Gene C. Schaerr

GENE C. SCHAERR

KENNETH A. KLUKOWSKI

JUSTIN A. MILLER

SCHAERR | JAFFE LLP

1717 K Street NW, Suite 900

Washington, DC 20006

Telephone: (202) 787-1060

gschaerr@schaerr-jaffe.com

MICHAEL BOOS

DANIEL H. JORJANI

CITIZENS UNITED

CITIZENS UNITED FOUNDATION

1006 Pennsylvania Avenue, S.E.

Washington, DC 20003

Telephone: (202) 547-5420

Counsel for Amici Curiae

November 1, 2024

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*
FORMER ATTORNEYS GENERAL EDWIN MEESE III AND
MICHAEL B. MUKASEY, PROFESSORS STEVEN CALABRESI
AND GARY LAWSON, CITIZENS UNITED, AND
CITIZENS UNITED FOUNDATION IN SUPPORT OF
APPELLEES AND AFFIRMANCE**

Former United States Attorneys General Edwin Meese III and Michael B. Mukasey, Professors Steven Calabresi and Gary Lawson, Citizens United, and Citizens United Foundation respectfully move this Court for leave to file the accompanying brief as *amici curiae* in support of Defendants, and in support of affirming the decision of the district court.

1. Attorney General Meese has been a leading figure in American law for more than 40 years. He served eight years in the Cabinet of President Ronald Reagan, first in the White House as Counselor to the President, then as the seventy-fifth Attorney General of the United States. He is now the Ronald Reagan Distinguished Fellow Emeritus at the Heritage Foundation. Attorney General Meese led the Department of Justice during the time that Independent Counsels were authorized by statute and has a distinctive perspective as to what the Constitution requires for the proper administration of justice with

regards to such officials, and how they differ from Special Counsels such as Jack Smith. This Court would benefit from Attorney General Meese's knowledge of Justice Department operations and legal authorities.

2. Attorney General Mukasey served in the Cabinet of President George W. Bush as the eighty-first Attorney General of the United States after serving as a judge on the United States District Court for the Southern District of New York. Attorney General Mukasey led the Department of Justice following the promulgation of the Reno Regulations that Appellants say govern the appointment of Special Counsels.

3. Professor Calabresi and Professor Lawson are leading scholars on the original public meaning of the Constitution. These professors have studied the Appointments Clause issue relevant to the prosecution of a former President of the United States, and their scholarship on this issue was published by one of the Nation's premiere legal journals, *Notre Dame Law Review*. Justices of the Supreme Court have cited their scholarship as helpful in informing the Court's deliberations. *See, e.g., United States v. Vaello Madero*, 596 U.S. 159, 169 (2022) (Thomas, J., concurring) (citing Professor Calabresi); *id.* at 181,

185 n.1 (Gorsuch, J., concurring) (citing Professor Lawson). This Court would benefit from a presentation of their scholarship in this case.

4. Citizens United (a 501(c)(4) social welfare organization) and Citizens United Foundation (a 501(c)(3)) educational and legal organization) are dedicated to restoring government to the people through by promoting federalism, free enterprise, individual liberty, and limited government. Their advocacy for the rule of law under the Constitution has resulted in legal precedents to advance these principles, most prominently in *Citizens United v. FEC*, 558 U.S. 310 (2010).

5. Lead counsel for *Amici Curiae*, Gene C. Schaerr, is well-qualified to present this material to assist the Court. Mr. Schaerr served as law clerk to Chief Justice Warren Burger and Justice Antonin Scalia on the Supreme Court, later served as Associate Counsel to the President in the White House of President George H.W. Bush, and has argued seven cases before the Supreme Court, in addition to numerous cases in the courts of appeals and district courts.

6. Leave to file this brief should be granted. *See, e.g., People First of Ala. v. Sec’y of State, Ala.*, No. 20-13695-B, 2020 WL 6074333, at *1 (11th Cir. Oct. 13, 2020) (per curiam). This brief is timely filed within

7 days of Appellee's opening brief and is within the word limits of FED. R. APP. P. 29. The parties do not oppose the filing of this brief.

7. The *amicus* brief avoids repetition of the arguments of the parties and offers limited additional argument and authority for points not already fully developed in this case. The Appointments Clause issue decided by the district court is of great import to the constitutional order in this Nation, and deserves thorough briefing and careful scholarship. It is what the Supreme Court has labeled a structural constitutional issue. *Freytag v. Comm'r*, 501 U.S. 868, 878–79 (1991). The *amicus* brief contains detailed analysis and material from scholarly works showing that regardless of what one thinks about other issues in this prosecution, Jack Smith has no authority to prosecute. Only persons properly appointed as federal officers to properly created federal offices can lead prosecutions. Neither he nor his position of Special Counsel meets those criteria. And that poses a serious problem for the rule of law.

8. The district court found *amicus's* presentation of this material helpful in deciding to grant the Defendants' motion to dismiss this case, referencing many of *amicus's* points in the court's decision. The Court is

likely to similarly find the accompanying material useful when deciding this appeal.

For these reasons, this Court should grant the motion for leave to file the accompanying *amicus* brief.

Dated: November 1, 2024

Respectfully submitted,

/s/ Gene C. Schaerr

GENE C. SCHAERR

KENNETH A. KLUKOWSKI

JUSTIN A. MILLER

SCHAERR | JAFFE LLP

1717 K Street NW, Suite 900

Washington, DC 20006

Telephone: (202) 787-1060

gschaerr@schaerr-jaffe.com

MICHAEL BOOS

DANIEL H. JORJANI

CITIZENS UNITED

CITIZENS UNITED FOUNDATION

1006 Pennsylvania Avenue, S.E.

Washington, DC 20003

Telephone: (202) 547-5420

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. Rule 32(g), I hereby certify that the foregoing motion complies with the length limitations set forth in Fed. R. App. P. 27(d)(2)(A) because it contains 816 words as counted by Microsoft Word, excepting those portions excluded by Fed. R. App. P. 27(a)(2)(B). I further certify that the foregoing complies with the type-space and type-style requirements of Rules 32(a)(5), and 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in Size 14 Century Schoolbook font.

/s/ Gene C. Schaerr
Gene C. Schaerr

Dated: November 1, 2024